filed." Id. at ¶ 50, citing Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act, FCC 96-469 (December 6, 1996) ("We expect that a Section 271 Application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon."). Id. at 2 (emphasis added). The "complete when filed" requirement clearly applies to pricing no less than to other checklist items. Indeed, the Ameritech Michigan Order states that the Commission "will not consider a BOC to be in compliance with section 271(c)(2)(B)(xiv) of the competitive checklist unless the BOC demonstrates that its recurring and non-recurring rates for resold services are set at the retail rates less the portion attributable to reasonably avoidable costs."[3]

18. Even without considering evidence and argument submitted by other parties, the Commission should find that BellSouth has failed to meet its burden of proof on this issue. That is because BellSouth has supplied to the Commission no data upon which it could base a finding that BellSouth's resale rates comply with the Act. Indeed, BellSouth's entire case on this issue consists of its affiant's conclusory assertion that its wholesale discount is based on "an FCC avoidable cost study" that it submitted to the SCPSC in the AT&T-BellSouth

[3] Ameritech Michigan Order at ¶ 295; see also id. at ¶ 291 ("in order for us to conduct our review, we expect a BOC to include in its application detailed information concerning how unbundled network element prices were derived").

arbitration proceeding.[4] Although BellSouth filed a one-page schedule showing a 13.2% discount, no study supporting the 14.8% discount nor any underlying documentation or assumptions supporting either the 14.8% or 13.2% discount are included in its application.[5]

IV. TO THE LIMITED EXTENT THAT THE SCPSC PROVIDED ANY BASIS FOR ITS ADOPTION OF A 14.8% WHOLESALE DISCOUNT, THAT BASIS IS INCONSISTENT WITH THIS COMMISSION'S DEFINITION OF AVOIDED COSTS

19. In all events, BellSouth's conclusory assertion that its discount is based on an "FCC avoidable cost study" is demonstrably false. In fact, the study upon which the SCPSC purportedly relied to establish the wholesale discount is inconsistent with the Act, and the Commission's rulings thereunder, in several significant respects, as explained below.

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[4] See BellSouth Br. at 53; Cochran Aff. ¶ 31. Contrary to BellSouth's affiant Varner (¶ 197), the Cochran affidavit does not "explain[ ] in detail the methodology and factual evidence the SCPSC used to determine the 14.8% discount rate," and is in fact completely devoid of any "methodological detail" or "factual evidence."

BellSouth also relies on the "finding" of the SCPSC that the 14.8% discount complies with the Act. Even assuming for the sake of the argument that it would be appropriate and lawful in certain circumstances for the Commission to defer to the finding of a state commission in lieu of an independent assessment of the evidence, it would be erroneous for the Commission to defer to the finding of the SCPSC here. See Affidavit of Kenneth P. McNeely.

[5] Because BellSouth's so-called FCC avoidable cost study was not made part of the record in the SCPSC's SGAT/Section 271 proceeding, it has not been furnished to the Commission as part of that record.

20. As noted above, the resale discount included in BellSouth's SGAT was adopted in the AT&T/BellSouth arbitration proceeding. The SCPSC made no independent review or findings in its SGAT/Section 271 proceeding. At the AT&T/BellSouth arbitration before the SCPSC, two witnesses presented testimony: Mr. Art Lerma on behalf of AT&T; and Mr. Walter C. Reid on behalf of BellSouth. Mr. Lerma submitted the results of the AT&T Simplified Avoided Cost ("ASAC") Study in his prepared direct testimony filed in the arbitration on January 6, 1997. As Mr. Lerma explained, the ASAC Study attempted to implement the resale provisions of the Local Competition Order. The result of that study was a wholesale discount of 26.1%.

21. Mr. Reid submitted two studies on behalf of BellSouth. He testified that BellSouth did "not agree with the FCC's criteria regarding the determination of avoided/avoidable costs," Reid Testimony at pgs. 14-15, and that the first of these studies therefore was not designed to comply with the Commission's Local Competition Order. But Mr. Reid testified that the second study, which was not intended as BellSouth's proposal but was offered merely "to give additional information to [the SCPSC]," id. at pg. 19, did comply with the Local Competition Order.

22. Mr. Reid's second study did not cure the defects in his first study. Although Mr. Reid's second study did reflect some amounts as avoided for most direct cost accounts,

like his first study it reflected no costs as directly avoided for the call completion and number services accounts (accounts 6621 and 6622). Moreover, based on conclusory allegations that BellSouth will continue to incur substantial retail costs in a wholesale environment, Mr. Reid's second study reflected only $973,000 out of $8,262,000 as directly avoided product management costs (account 6611), or 11.8%, and only $35,962,000 out of $56,936,000 or 63%, as directly avoided customer service costs (account 6623). Moreover, to calculate avoided indirect costs, Mr. Reid multiplied BellSouth's overhead and general support accounts by the ratio of avoided direct costs to total direct and indirect costs. Thus, Mr. Reid's second study does not reflect avoided indirect costs in proportion to avoided direct costs as required by the Local Competition Order (at ¶ 918), and significantly understates avoided indirect costs.

23. In its arbitration order, the SCPSC did not even address the ASAC study submitted by AT&T, presumably because the SCPSC "agree[d] with BellSouth's study and its calculation that relies on the Act's 'avoided' cost standard and which calculates the wholesale discount based on the fact that BellSouth will continue to operate in a wholesale and retail environment." Order No. 97-189 at 13 (emphasis added).[6] The SCPSC's express "agree[ment]" with BellSouth's reliance on the "avoided" cost standard rejected by the

[6] In its arbitration order, the SCPSC completely disregarded, and did not even mention, Mr. Lerma, his explanation of the methodology underlying the ASAC Study, or his recommended wholesale discount.

Commission, obviously precludes any reliance on the SCPSC's finding that the discount adopted complies with the Act.

24. To arrive at the 14.8% discount, the SCPSC made certain adjustments to the 13.2% figure from BellSouth's second study. The adjustments made by the SCPSC to that second study -- for example, the SCPSC's conclusion that 30% of call completion and number services costs rather than none of those costs were avoided -- were wholly unsupported and unexplained, and appear to have been completely ad hoc.[7] Similarly, even though the Commission presumed that a wholesaler would avoid 90 percent of product management costs, BellSouth's FCC-compliant study assumed that a wholesaler would avoid only 11.8 percent of such costs, and the SCPSC (again without explanation) adjusted that figure only to 25 percent.

[7] Moreover, the 14.8% discount falls not only well outside the default range developed in the Local Competition Order, but it is also completely out of line with the discounts that have been adopted in most other states, including those states in which BellSouth does business. BellSouth's 14.8% discount falls over two percentage points below the bottom of the default proxy range. Moreover, of the 71 decisions that have been issued by state commissions nationwide, only five have approved wholesale discounts as low or lower than the discount proposed by BellSouth in South Carolina. The average wholesale discount nationwide is 20.5% -- over 5 percentage points higher than the discount approved by the SCPSC; the weighted average wholesale discount for BellSouth in the region it serves excluding South Carolina is 19%. Hence, by comparison to any relevant national, or even regional benchmark, the BellSouth-South Carolina wholesale discount is abnormally low.

25. In sum, the SCPSC's arbitration decision, the sole basis offered by BellSouth for the 14.8% discount rate cannot reasonably be relied upon by the Commission as comporting with the Act and this Commission's rules. The rate is an anomaly, and the result of a seriously flawed decisional process in which the SCPSC relied -- to the limited extent that it provided any explanation for its decision at all -- on a methodology expressly rejected by this Commission.

V. BELLSOUTH MAY SEEK TO IMPOSE A NON-RECURRING CHARGE ON RESELLERS RESELLING CLECs SIGNIFICANTLY IN EXCESS OF TELRIC FOR CUSTOMER MIGRATION

26. In its Ameritech Michigan Order, the Commission noted the Act's requirement that "[n]on-recurring charges associated with resale that have no retail equivalent . . . should be based on forward-looking economic costs" -- i.e., TELRIC. Id. at ¶ 296 n.752. Hence, any non-recurring charge imposed by BellSouth for a customer's change from existing BellSouth local service to a CLEC's local service via resale (customer migration) should be based on TELRIC pricing principles, because there is no comparable retail rate. AT&T calculates that the incremental forward-looking cost associated with such a customer migration is no more than $.23 per individual order.

27. In South Carolina, BellSouth has not yet proposed a rate for the migration of existing BellSouth customers to a CLEC, and its SGAT is silent on this issue. In Georgia,

however, where AT&T is receiving bills for the resale of BellSouth local service, BellSouth is imposing a New Installation non-recurring charge for migration service requests of $33.87.[8] AT&T expects that BellSouth will seek to impose such a charge in a similar amount in South Carolina, even though such "New Installation" charges traditionally apply only to new service connections and premises work (if needed), not to the simple software change associated with a customer migration service request. Indeed, the activities of simply migrating a customer's existing service to a CLEC are analogous to the PIC charge (the act of changing long distance service providers) in BellSouth's Interstate Access tariff, which is currently set at $1.49 per change. Because BellSouth's SGAT has not specified a TELRIC-based non-recurring charge for CLEC customer migration requests -- or, alternatively, has not made clear that no non-recurring charge will apply in such circumstance -- it has not met the requirements of Section 271(c)(2)(B)(xiv).

VI. BELLSOUTH'S REFUSAL TO OFFER CONTRACT SERVICE ARRANGEMENTS AT WHOLESALE RATES, OR FOR RESALE TO OTHER CUSTOMERS

28. As I noted earlier, in the Local Competition Order the Commission ruled that Section 251(c)(4) of the Act "makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings," and that "[i]f a service is sold to

[8] The charge that BellSouth has imposed in Georgia is based on the retail non-recurring cost for new installations set forth in BellSouth's tariff less the applicable wholesale discount.

end users, it is a resale service, even if it is priced as a volume-based discount off the price of another service," and thus must be made available at a wholesale discount for resale. Local Competition Order at ¶ 948. The Eighth Circuit affirmed these aspects of the Commission's Local Competition Order.

29. Nonetheless, BellSouth's SGAT provides that, unlike other telecommunications services offered by BellSouth, CSAs are not available at wholesale discount rates:

> B. Discounts. Retail services are available at discounts as ordered by the Commission . . . . Discounts apply to intrastate tariffed service prices except that these discounts do not apply to the following services:
>
> > 1. Contract Service Arrangements. BellSouth's contract service arrangements are available for resale only at the same rates, terms and conditions offered to BellSouth end users.

SGAT § XIV.B (emphasis added). In his affidavit filed with BellSouth's application, Mr. Varner confirms that, under BellSouth's SGAT, "the wholesale discount will not apply" to CSAs. Varner Aff. at ¶ 191. Hence, BellSouth's SGAT violates the Commission's ruling.

30. There can be no dispute that the services offered through CSAs are subject to the resale requirement of Section 251(c)(4)(A); they are clearly telecommunications services

within the meaning of § 153(46) of the Act and are "provide[d] at retail to subscribers who are not telecommunications carriers." Thus, for example, BellSouth's CSA with General Electric includes basic business service, ISDN business services, and Mega Link services. See Customized Telecommunications Service ("CTS") Agreement, BellSouth and General Electric, Tariff 97-13 (SC PSC). BellSouth's agreement with NationsBank includes basic business services and PBX trunks. See CTS Agreement, BellSouth and NationsBank, Tariff 97-110 (SC PSC, filed March 18, 1997). Moreover, BellSouth offered no evidence to the SCPSC in the arbitration or compliance proceeding, or with its application to this Commission, that there are no avoidable costs associated with resold CSAs. Indeed, the only resale-related cost evidence that BellSouth has offered here is one paragraph in Mr. Cochran's testimony and one single-page summary exhibit. See Cochran Aff. at ¶ 31 and Exhibit A.

31. Rather, the sole justification offered by BellSouth for the exclusion of CSAs from the wholesale discount is the SCPSC's arbitration order, Varner Aff. at ¶ 192; see BellSouth Brief at 53 -- i.e., that "CSAs are designed to respond to specific challenges on [a] customer by customer basis," and that "the contract price for these services has already been discounted from the tariffed rate in order to meet competition." SCPSC Order No. 97-189 at 4-5 (March 10, 1997). This rationale is based on BellSouth's arguments to the SCPSC, but

those arguments are the same arguments that this Commission expressly rejected in the Local Competition Order as being inconsistent with Section 251(c)(4) of the Act.

32. BellSouth also refuses to permit CLECs to purchase any CSA at the retail rate and resell it to customers other than the one for which it was developed.[9] In its brief in the AT&T/BellSouth arbitration, BellSouth notes that it will "restrict the resale [of CSAs] to the existing customer under the contract at the applicable contract rate." Brief and Proposed Order in SCPSC Docket No. 96-358-C at 6 dated February 18, 1997 (emphasis added). Hence, not only would a CLEC have to buy CSAs at the same retail prices BellSouth charges to its customers, it could only resell a particular CSA to the customers that had already subscribed to it, and not to other customers. BellSouth itself is obviously subject to no such restriction; it is free to offer the same terms and conditions embodied in a particular CSA to anyone it likes. Hence, BellSouth's imposition of such a restriction on CLECs is clearly a "discriminatory condition[ ]" on the resale of telecommunications services in direct violation of Section 251(c)(4)(B) of the Act.

[9] BellSouth apparently believes that this restriction is incorporated in the SGAT through the language providing that CSAs "are available for resale only at the same rates, terms and conditions offered to BellSouth end users." AT&T has advised BellSouth that it understands that CSAs are not available under its SGAT for resale to other customers, and requested BellSouth to inform AT&T if this understanding were incorrect. BellSouth has not denied this interpretation of its SGAT.

33. An important practical consequence of BellSouth's restriction is that CSAs, whether discounted or not, are effectively unmarketable to anyone. They cannot be marketed to new customers who individually could satisfy the applicable terms and conditions, and they cannot be marketed to groups of new customers who, in the aggregate, could satisfy those terms and conditions. This is contrary not only to Commission Rule 57.613 but also to the Commission's Texas Preemption Order preempting enforcement of a "continuous property restriction" on the resale of centrex service on the grounds that this restriction violates Section 253(a) of the Act. While noting that the restriction "does not prohibit outright competing carriers from reselling . . . centrex services," the Commission found that

> enforcement of the provision effectively precludes new entrants from providing competitive centrex services through resale due to their inability to aggregate small users into a large group, and thereby offer rates, services and features that are otherwise unavailable to a single user.

Id. at ¶ 220. The Commission concluded that such enforcement "'has the effect' of prohibiting the ability of any entity to provide a telecommunications service . . . through resale in violation of section 253(a) of the Act standing alone." Id. at ¶ 220. The Commission also concluded that such enforcement "constitutes an 'unreasonable or discriminatory limitation' on resale in violation of section 251(c)(4)(B) of the Act, and our implementing regulations." Id. at ¶ 218.

34. The only group to which BellSouth permits the marketing of CSAs -- existing BellSouth CSA customers -- is also the group with no conceivable incentive to subscribe to one. This follows not simply from the lack of a wholesale discount, but from the fact that BellSouth's CSAs typically contain substantial cancellation penalties. For example, BellSouth's three-year agreement with NationsBank imposes termination penalties of at least $3 million for the first year and at least $2 million for the second year. Hence, a CLEC and a signatory of a CSA could do business with one another only at a substantial cost to both parties -- without the availability of even the inadequate wholesale discount available for the resale of other BellSouth telecommunications services. The CLEC would have to resell CSA services at a loss, and the CSA signatory would have to pay a substantial penalty for departing from BellSouth.

35. If there were any possible doubt that the sole purpose of these restrictions is to enable BellSouth to insulate substantial portions of its markets from resale competition, such doubt would be dispelled by BellSouth's conduct. In 1994 and 1995, prior to the advent of the Act, BellSouth entered into only 47 and 41 CSAs respectively. In 1996, with the advent of the Act, BellSouth filed 66 CSAs. And as of September 30, 1997, BellSouth has filed 141 CSAs, more than twice as many it did in all of 1996.

36. Since the Act became effective, BellSouth has locked up minimum revenue commitments from its customers through CSAs that will generate almost $300,000,000 over the next few years. The table, attached to my affidavit as Attachment 1, lists 45 of the largest CSAs obtained by BellSouth in South Carolina and elsewhere in its region, including agreements with various companies for commitments of $35 million over 5 years, $38 million over 3 years, $47 million over 3 years and $12 million over 2 years.[10] Through its restrictions on CSAs, BellSouth has effectively precluded competition for this revenue in its entirety.[11] Moreover, while BellSouth continues to lock in new and lucrative customers, it is preventing CLECs from using the existing CSAs to attract new customers.

[10] The $300 million in revenues likely understates the actual gains to BellSouth from CSAs; it represents only the minimum commitments in 47 CSA's. Those CSAs provide incentives for customers who exceed the minimum usage, and thus actual revenues will be higher. Moreover, the remaining CSAs may not impose minimum revenue commitments on the customer, but nonetheless provide additional significant revenue beyond the $300 million.

[11] While many of these CSAs contain provisions that allow the customer to defect to a competitor if BellSouth fails to match a bona fide competitive offer with lower rates, BellSouth's current resale restrictions, if continued, will prevent any CSA customer from ever being able to invoke those clauses. Without a proper wholesale discount that applies to all CSAs, no CLEC will be able to make a competitive offer, and those customers will remain with BellSouth.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on October 15th, 1997.

Patricia A. McFarland

Patricia A. McFarland

SUBSCRIBED AND SWORN TO BEFORE ME this 15th day of October 1997.

Notary Public

My Commission Expires:

MY COMMISSION EXPIRES
JANUARY 29, 2000

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF PATRICIA A. McFARLAND

ATTACHMENT 1

FCC DOCKET CC NO. 97-208
AFFIDAVIT OF PATRICIA A. McFARLAND

PROPRIETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Service in the State of South Carolina	)	CC Docket No. 97-208

AFFIDAVIT

OF

PATRICIA A. MCFARLAND

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT H

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AFFIDAVIT OF
PATRICIA A. MCFARLAND
ON BEHALF OF AT&T CORP.

Patricia A. McFarland, being first duly sworn upon oath, does hereby depose and state as follows:

I. AFFIANT

1. My name is Patricia A. McFarland. My business address is 1200 Peachtree Street N.E., Room 5070, Atlanta, Georgia 30309.

2. I am employed by AT&T Corp. ("AT&T") as a manager in the Regulatory Chief Financial Officer ("RCFO") organization. As such, I am responsible for AT&T regulatory financial activities in a number of states and for a number of subject matter areas, such as local exchange carrier ("LEC") cost analysis functions. I have testified with regard to the retail costs incumbent LECs will avoid in the provision of wholesale local service on behalf of AT&T in recent arbitration and resale proceedings in Louisiana, Tennessee, Alabama and Kentucky.

3. I have a degree in Business Administration with a concentration in Accounting from Oglethorpe University in Atlanta, Georgia.

4. In 1968, I began my career at Pacific Telephone Company in San Francisco where I held a variety of Operator Services staff and line positions. I primarily performed payroll, budgeting and scheduling functions. In 1982, at divestiture, I transferred to AT&T and assumed responsibility for LEC billing in conjunction with California Operator Services Shared Network Facilities Agreements. In 1985, I accepted the position of Assistant Manager - Accounting Regulatory Support responsible for AT&T financial regulatory matters for Oregon and Washington. In May of 1991, I transferred to my present organization in Atlanta, Georgia. Initially, I was responsible for AT&T financial regulatory matters for the south central states. In 1995, I accepted my current position of Manager - RCFO.

II. SCOPE OF AFFIDAVIT AND SUMMARY

5. Section 272 of the Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996 ("Act"), bars a Bell Operating Company ("BOC") from providing in-region interLATA service unless it provides such service through an affiliate that meets the separation and nondiscrimination requirements of that section. By imposing a variety of accounting and nonaccounting safeguards, section 272 attempts both to prevent a BOC from discriminating against its competitors and in favor of its long-distance affiliate, and to prevent a BOC from subsidizing its affiliate by recovering the affiliate's costs through the BOC's local and exchange access service customers.[1]

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[1] "Congress ... enacted section 272 to respond to the concerns about anticompetitive discrimination and cost-shifting that arise when the BOC enters the interLATA services (continued...)

6. In its recent Ameritech Michigan Order,[2] the Commission confirmed that the obligations and restrictions under section 272 were of "crucial importance," id. at ¶ 346, and that the BOCs and their section 272 affiliates have been required to comply with those obligations and restrictions since the date the Act was passed, February 8, 1996. Id. at ¶ 371. The Commission also confirmed that to satisfy the public disclosure requirements of section 272(b)(5), a BOC must disclose detailed information regarding the terms and conditions of each transaction between the BOC and its section 272 affiliate, including the rates for each transaction. Id. at ¶ 369.

7. The purpose of this Affidavit is to discuss the failure of BellSouth Telecommunications, Inc. ("BellSouth") and its section 272 affiliate, BellSouth Long Distance, Inc. ("BSLD"),[3] to meet their burden of establishing that they will operate in

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[1] (...continued)
market in an in-region state in which the local exchange market is not yet fully competitive." Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Action of 1934, As Amended, CC Docket No. 96-149, Second Order on Reconsideration, FCC 97-222 (released June 24, 1997), ¶ 5. The section 272 affiliate is required, among other things, to operate independently from the BOC, to maintain separate books and records, to have separate officers, directors, and employees, and to conduct all transactions with the BOC on an arm's length basis, reducing such transactions to writing, available for public inspection. § 272 (b). In addition, the BOC is prohibited from discriminating in favor of its section 272 affiliate in the provision of "goods, services, facilities, and information, or in the establishment of standards." § 272(c).

[2] Application of Ameritech Michigan Pursuant To Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order (released Aug. 19, 1997) ("Ameritech Michigan Order").

[3] According to BellSouth, BSLD is a wholly-owned subsidiary of BellSouth Long Distance Holdings, Inc. which in turn is a wholly owned subsidiary of BellSouth Corporation. Affidavit of Victor E. Jarvis, in the Matter of Application by BellSouth Corporation for Provision of In-Region, InterLATA Services in South Carolina ("Jarvis Aff.") at 2.

compliance with section 272 if and when BellSouth is granted authorization to provide in-region interLATA services. In its application, BellSouth has not provided the sort of detailed, specific evidence concerning its past and current transactions with BSLD that is necessary to permit the Commission to come to any conclusion as to whether it will comply with section 272. Indeed, the evidence presented by BellSouth plainly demonstrates that if it were granted interLATA authority today, it would not be in compliance with section 272.

8. Although BellSouth has stated that it already provides fifteen different categories of services to BSLD having a total cost of over $8.8 million, it has not publicly disclosed the details of these transactions, as required by section 272(b)(5) and the Commission's Accounting Safeguards Order.[4] Indeed, in defiance of the Commission's Ameritech Michigan Order, BellSouth has taken the position in its current application that "[p]rior to receiving interLATA authorization . . . [BellSouth] and BSLD need not conduct transactions in accordance with the requirements of section 272." Brief in Support of Application by BellSouth for Provision of In-Region InterLATA Services in South Carolina ("BellSouth Br.") at 59. Furthermore, BellSouth has directly defied the Commission by failing to post "a detailed written description . . . on the Internet within 10 days" of all transactions between BellSouth and BSLD, nor have they made this information "available for public inspection at the principal place of business of [BellSouth]." Accounting Safeguards Order, ¶ 122.

9. In addition, the vague, limited descriptions of the services provided to BSLD by BellSouth make it impossible to make any evaluation whether BellSouth has

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[4] Implementation of the Telecommunications Act of 1996, Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order (released Dec. 24, 1996) ("Accounting Safeguards Order"), ¶ 122.

complied with the Commission's accounting rules or otherwise has met the antidiscrimination requirements of section 272. For example, these descriptions provide no rates or prices for the services, do not identify the time period during which the services were rendered, and provide no details regarding other basic terms and conditions.

10. BellSouth also has not identified any internal systems or procedures that it has instituted specifically to address the requirements of section 272 and to attempt to protect against violations of section 272. I am familiar with such internal compliance systems instituted by other BOCs -- such as oversight committees to review section 272 transactions, and customer contact points to protect against "off-the-record" transactions -- and I believe that such compliance programs are essential for a BOC to establish that it is ready and able to comply with section 272.

11. Nor has BellSouth provided any information or evidence to explain how it will identify, end, and correct, through a "true-up" or otherwise, any improper cross-subsidization and discrimination that may already have occurred. The risk that such inappropriate subsidization or discrimination has occurred is substantial, because BellSouth apparently has been operating under the view that none of the transactions between it and BSLD have been subject to the restrictions of section 272. Unless some attempt is made to identify and rectify any such impermissible transactions, then BSLD will be able to enter the interLATA market with improper subsidies or other illicit and anticompetitive advantages.[5]

12. Finally, BellSouth has asserted, again in defiance of the Commission's Order, that it will instruct its customer service representatives to recommend BSLD long

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[5] See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 (released Dec. 24, 1996) ("Non-Accounting Safeguards Order"), ¶¶ 9-13.

distance service to customers calling to order local exchange service, and not to recite a list of long distance carriers unless the customer affirmatively requests such information.[6] This proposed marketing practice is virtually identical to the telemarketing script that the Commission found unacceptable in its Ameritech Michigan Order. Ameritech Michigan Order, ¶¶ 375-76.

13. Ultimately, BellSouth's evidence that it will comply with section 272 is simply paper promises. These assurances are not due any significant weight, especially in light of the fact that in the past auditors have found BellSouth's behavior to be "obstructionist," preventing the auditors from even being able to form an opinion regarding whether BellSouth was improperly subsidizing affiliates.[7]

III. BELLSOUTH MUST PRESENT SPECIFIC, TANGIBLE EVIDENCE, NOT MERE PROMISES, TO MEET ITS BURDEN UNDER SECTION 271(d)(3).

14. In the Ameritech Michigan Order, the Commission again made clear that BOCs bear the burden under section 271(d)(3) of establishing that they will operate in compliance with section 272 if granted interLATA authority. Ameritech Michigan Order, ¶¶ 43, 371. "Paper promises do not, and cannot, satisfy a BOC's burden of proof." Id. at ¶ 55. The requirement that a BOC come forward with specific, tangible evidence is especially appropriate in the context of section 272 compliance, because most of the evidence relevant to such a determination lies exclusively in the hands of the BOCs and their affiliates.

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[6] Affidavit of Alphonso J. Varner, in the Matter of Application by BellSouth Corporation for Provision of In-Region, InterLATA Services in South Carolina ("Varner Aff."), ¶ 230.

[7] See infra ¶¶ 50-51.